

**Letter of Findings: 01-20150561
Individual Income Tax
For the Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Even though Individual had significant contacts in both Florida and Indiana in 2011, Individual was deemed not domiciled in Indiana because Individual, who lived in both Indiana and Florida, demonstrated with sufficient intent that he had abandoned Indiana as his domiciliary state.

ISSUES

I. Income Tax - Residency.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-3.5; IC § 6-3-1-12; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-22](#).

Taxpayer protests the imposition of Indiana individual income tax for the 2011 year arguing that, contrary to the Indiana Department of Revenue's ("Department") contentions, he was not an Indiana resident in 2011 for income tax purposes, but rather a resident of Florida.

II. Tax Administration - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer lives in Florida and in Indiana during different times of the year, which was the case in 2011, the year at issue. The Department determined that for 2011, Taxpayer was an Indiana resident and was therefore required to file an Indiana IT-40 for 2011. The Department issued a proposed assessment of tax, penalty, and interest for 2011. It should be noted that the proposed assessment was issued to Taxpayer and his deceased wife (she died in 2010). Taxpayer protested the assessment of tax arguing that he was a resident of Florida and therefore did not need to file an Indiana resident income tax return. A hearing was held on his protest and this Letter of Findings ensues. Additional facts will be provided as needed.

I. Income Tax - Residency.

DISCUSSION

The Department determined that Taxpayer was an Indiana resident for all of 2011 because Indiana was Taxpayer's domicile. The Department based its determination on the fact that Taxpayer had been a long-time resident of Indiana with strong family, community, and philanthropic ties to Indiana; he continued to seek financial and estate planning and other consultations with Indiana professionals in Indiana; he continued to have several vehicles registered in Indiana; he had renewed his Indiana driver's license in 2007; he had taken the Indiana homestead deduction in 2011 on the house he lived in whenever he was in Indiana; and that he had various 2011 Forms 1099 and K-1 sent to an Indiana address presuming Indiana-source income. The Department considered these facts evidence that Taxpayer had not abandoned his longstanding Indiana domicile.

Taxpayer protests the imposition of Indiana adjusted gross income tax for the tax year 2011. Taxpayer argues that Florida has been his domicile since 2006. Taxpayer argues that, since 2006 and including 2011, he owned a home in Florida, voted in Florida, had a Florida driver's license, had vehicles registered in Florida, had legal documents that referenced his Florida address, and that he had multiple Florida social affiliations. Taxpayer argues that since 2006 he has been a resident of Florida and not Indiana. Taxpayer asserts that he was therefore not required to file a 2011 Indiana income tax return nor did he owe any Indiana income tax for 2011.

A. Statement of the Law

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, the taxpayer is required to provide documentation explaining and supporting his challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). A nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

In other words, Indiana residency is established if an individual is domiciled in Indiana ("domicile test") and/or the individual is in Indiana for 183 days or more and maintains a permanent place of residence/abode in Indiana for a given year ("183 days and PPA test"). An individual may not meet the "183 days and PPA test" and still be considered an Indiana resident if that individual is deemed to be domiciled in Indiana. And vice versa, an individual may be considered an Indiana resident if the taxpayer meets the "183 days and PPA test" in Indiana, even though they may be domiciled elsewhere.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which "domicile"—and thus residency—is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court explained, in relevant part:

Once acquired, domicile is presumed to continue because every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place. Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile. A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Id. at 1317 (internal quotations and citations omitted). The Indiana Supreme Court went on to conclude that:

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile.

Id. at 1318 (Internal citations omitted); see also *In the Matter of Evrard*, 333 N.E.2d 765, 768 (Ind. 1975) ("The person must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable.")

Additionally, [45 IAC 3.1-1-22](#) considers the following relevant facts in determining whether a new domicile has been established:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

These factors are not exclusive in determining an individual's intent to relocate. "The determination of a person's intent in relocating is necessarily a subjective one. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case." *Id.*

B. Application of 183 days and PPA test

As stated above, in order to meet the "183 days and PPA" test for residency provided in IC § 6-3-1-12(b), a taxpayer must first have a "permanent place of residence" in Indiana and, second, a taxpayer must have been in Indiana for 183 days or more.

It is undisputed that Taxpayer had a permanent place of residence in the state. However, Taxpayer states that he was in Indiana for less than 183 days in 2011. In a letter dated January 26, 2016, sent following the hearing, Taxpayer specifically states:

[Taxpayer] estimates he was physically present, for all or any part of a day, 164 days in 2011, 172 days in 2012, and 124 days in 2013. However, using the Indiana Tax Court's reasoning in *Bruns v. State Department of Revenue*, 725 NE2d 1023 (2000), that "to be present in Indiana for a day, a person must be present in the state for at least 24 hours", the number of days [Taxpayer] spent in Indiana would instead to be closer to 145, 158, and 115 days for 2011, 2012, and 2013 calendar years, respectively.

During the course of the hearing Taxpayer inquired as to what documentation the Department would require to address the 183 days portion of the statute. The hearing officer indicated that Taxpayer should provide whatever documentation he had that could objectively demonstrate the contention that he was not in Indiana for more than 183 days in 2011. The hearing officer gave an example that utility records might be one type of documentation, but recommended Taxpayer present whatever would establish his contentions.

In response, Taxpayer provided gas, electricity, and water invoices for 2011. The gas invoices show consistent and comparably high bills from January through June, comparably lower bills for July and August, and significantly lower bills September through December. This documentation does not, on its own, objectively show that Taxpayer was in Indiana for less than 183 days in 2011. There were fewer discernable patterns in the electricity and water invoices presented, and certainly no information that buttressed Taxpayer's contentions regarding the days spent in Indiana.

The Department necessarily has to rely on objective documentation that supports Taxpayer's statements in order to ascertain whether Taxpayer was in Indiana for less than the 183 days. The utility records, on their own, did not provide the clarity needed. However, even if Taxpayer's statements were supported by underlying documentation, the issue of Taxpayer's residency for 2011 would not be resolved because the question of "domicile" needs to be addressed.

C. Application of domicile test

As discussed above, a taxpayer may be considered an Indiana resident for income tax purposes, if a taxpayer is found to be domiciled in Indiana. The question of "domicile," because it involves determining one's intent, is more difficult to answer. This is especially the case when an individual has clear ties to more than one state.

Croop v. Walton, 157 N.E. 275 (Ind. 1927) involved a taxpayer with clear ties to two states, Indiana and Michigan. There a taxpayer who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. The taxpayer lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* At 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, taxpayer did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] taxpayer has two residences in different states, he is taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one."

'[D]omicile' . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

(Internal citations omitted) **(Emphasis added)**

In explaining the difference between "residence" and "domicile," the court in *Croop* stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."

To effect a change of domicile, **there must be an abandonment of the first domicile** with an **intention not to return to it**, and there must be **a new domicile acquired by residence elsewhere** with an **intention of residing there permanently, or at least indefinitely.**

(Internal citations omitted) **(Emphasis added)**

In *State Election Bd. V. Bayh*, 521 N.E.2d 1313 (Ind. 1988) the Indiana Supreme Court considered the issue of the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court stated, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

A person who leaves his places of residence temporarily, but with the intention of returning, has not lost his original residence. *Yonkey v. State* (1866), 27 Ind. 236. *Citation included here so that it can be used or discarded.*

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.** *Id.* at 1317 - 1318 (Ind. 1988).

(Emphasis added).

In order for Taxpayer to be deemed domiciled in Florida, a state that does not tax individual income, Taxpayer

must demonstrate that he abandoned Indiana as his domiciliary state as referenced above in the discussion of the *Croop* and *Bayh* cases.

As stated above, the Department based its determination on the fact that Taxpayer had been a long-time resident of Indiana with strong family, community, and philanthropic ties to Indiana; he continued to seek financial and estate planning advice and other consultations with Indiana professionals in Indiana; he continued to have several vehicles registered in Indiana; he had renewed his Indiana driver's license in 2007; and that he had various 2011 Forms 1099 and K-1 sent to an Indiana address presuming Indiana-source income. It also appeared that Taxpayer had taken the Indiana homestead deduction in 2011 on the house he lived in whenever he was in Indiana. While not a single determinative factor, when a taxpayer takes the Indiana homestead deduction under IC § 6-1.1-12-37, the taxpayer is declaring the homestead as his/her principal residence. IC § 6-1.1-12-37(k)(2). Under IC § 6-1.1-12-37(a)(2)(B)(iv), this includes the beneficiary of a trust (referring to IC § 6-1.1-12-17.9). The taxpayer taking the credit does so with a certified statement. IC § 6-1.1-12-37(e). If the taxpayer changes his/her use of the property such that it would no longer qualify for the credit, the taxpayer must inform the county of that change and ask that the credit be removed. IC § 6-1.1-12-37(f)(1). If a taxpayer does not make that declaration when the use of the property has changed and ask that the credit be removed, the taxpayer is required to pay back the tax benefits he received due to the homestead deduction as well as a ten-percent penalty and other likely fees. IC § 6-1.1-12-37(f). The Department considered all facts indicia that Taxpayer had not abandoned his longstanding Indiana domicile.

In the January 26, 2016, letter mentioned above, Taxpayer explains that in 2011 and 2012, due to the passing of his wife and his own subsequent health reasons, he spent more time in Indiana in those two years than he would have ordinarily spent. Taxpayer explained that he had family in Indiana whose support he needed and also that he had prior significant connections to the Indiana medical facility where he sought treatment. The entity which provided Taxpayer investment information and provided him administrative services is one with which he had a long-standing relationship here in Indiana and which he owned. It is the sale of this entity that eventually precipitated his move to Florida.

Taxpayer also explained, and documented, that his and his wife's intent had been to move to Florida after he sold his business interest. They purchased a home in Florida, took the Florida homestead credit, bought and registered vehicles in Florida, affiliated with clubs and a church, registered to vote and voted in Florida, made estate plans that reflected a Florida address and Florida domicile. Taxpayer pointed out that he had family both in Indiana and in Michigan and that he made trips to visit his family in these states. Taxpayer acknowledged that he did have ties in Indiana, but that he clearly intended to move his home base to Florida.

Furthermore, while it appeared that Taxpayer took the Indiana homestead deduction on the Indiana house which was Taxpayer's long-time residence and in which he resided when in Indiana, including during 2011, Taxpayer explained otherwise. The house itself had been placed in a trust in his wife's name some years prior. Taxpayer provided documentation showing that his wife had contacted their county clerk around the time of their move to Florida to ask that the homestead credit be removed from the property. The county clerk responded confirming that the credit would be removed, however for some unexplained reason the clerk failed to remove the credit at the time. It was finally removed in a year subsequent to 2011 when the Taxpayer followed up with the county clerk.

The determination in this case is complicated by the fact that the Taxpayer has the means to maintain property and active contacts in multiple states. On balance, even though Taxpayer had significant contacts in both Florida and Indiana in 2011, Taxpayer has demonstrated sufficient intent to relocate his domicile to Florida.

Taxpayer has therefore met his burden to show that he is not an Indiana resident pursuant to IC § 6-3-1-12(a) and [45 IAC 3.1-1-22](#).

Residency cases are particularly fact sensitive thus the position relayed within this document pertains only to this case and its specific set of facts.

FINDING

Taxpayer's protest is respectfully sustained.

II. Tax Administration - Negligence Penalty.

DISCUSSION

In addition to protesting the substantive issue of residency, Taxpayer protests the assessment of the negligence penalty.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In order to establish reasonable cause, Taxpayer must demonstrate that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and penalty arose. [45 IAC 15-11-2\(c\)](#).

Taxpayer states that he had "reasonable cause" for presuming that he did not have an Indiana filing obligation and was not "willfully neglectful" of that obligation. Given that Taxpayer had substantive contacts in both Indiana and Florida, Taxpayer has met the burden imposed by IC § 6-8.1-10-2.1.

FINDING

Taxpayer's protest of the negligence penalty is sustained.

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